

BONNIE S. GOSSER
Claimant

EASTGATE PLAZA, INC.
Respondent

CGU HAWKEYE SECURITY INSURANCE
Insurance Carrier

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ORDER

ISSUES

1. Did claimant suffer accidental injury on the dates alleged?
2. Did claimant's accidental injury or injuries arise out of and in the course of her employment with respondent?
3. Is claimant entitled to temporary total disability compensation while earning wages at a different job?

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant worked as a housekeeper for the respondent in their apartment complex. When an apartment unit would be vacated, it would be claimant's responsibility to go into the empty unit and clean the apartment. This involved hand-intensive cleaning, scrubbing and hand mopping of walls, bathrooms, kitchens, appliances, and floors. Claimant testified that, in February 1999, her hands began to bother her. She attributed her hand problems to the hand-intensive work with respondent. Claimant then testified that, during the month of March 1999 up to her termination on March 19, 1999, her hand pains became much worse, again due to the hand-intensive nature of her job.

Respondent alleges claimant's condition did not arise out of her employment as she worked an extremely limited number of hours, leading up to her alleged date of accident. It is noted claimant initially alleged a date of accident through February 23, 1999. However, at the preliminary hearing claimant amended her date of accident to include through March 19, 1999, her last day worked with respondent.

Respondent provided claimant's work history showing that claimant performed no work for the respondent after December 13, 1998, and through the entire month of January 1999. In February 1999, claimant worked a total of eight hours for the respondent; however, between March 1 and March 19, 1999, claimant performed 62 hours of labor for the respondent in this hand-intensive job. It was during this period that claimant testified that her hand problems became severe to the point where she required medical care.

Respondent further contends that claimant's condition is not connected with her job with the respondent as claimant worked a second job for the Resource Center For Independent Living (RCIL). However, claimant's work with RCIL only involved three hours per week of cleaning with an additional three hours per month added. Claimant apparently continued working for RCIL after leaving respondent, but it is unclear whether claimant's position with RCIL terminated after she began receiving treatment for her hands.

The Administrative Law Judge found that claimant had satisfied her burden of proving that she suffered accidental injury arising out of and in the course of her employment with respondent and awarded benefits. After reviewing the record, the Appeals Board agrees. The Appeals Board acknowledges that, in proceedings under the Workers Compensation Act, it is the claimant's burden to establish her right to an award of compensation by proving the various conditions upon which her right depends by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g). It is also claimant's burden to prove that she suffered accidental injury arising out of and in the course of her employment with the respondent.

However, in determining the compensability of this claim, claimant is not limited to proving that her work caused the injury. Claimant can also prove that her work with the respondent aggravated a pre-existing condition. In this instance, claimant's testimony is somewhat confusing regarding whether her condition began in February or March 1999. It is, however, clear that claimant's work during the month of March 1999 aggravated her

condition, making it, "real bad" and forcing claimant to seek medical treatment. The Appeals Board, therefore, finds claimant has sustained her burden of proving that she suffered accidental injury while employed with the respondent, and her duties with the respondent, at the very least, aggravated her bilateral upper extremity conditions.

Claimant's entitlement to temporary total disability compensation is not an issue which can be considered by the Appeals Board at this time. K.S.A. 1998 Supp. 44-534a and K.S.A. 1998 Supp. 44-551 limit a party's right to appeal from a preliminary order to situations where it is alleged that the administrative law judge exceeded his/her jurisdiction in granting or denying the relief requested at preliminary hearing. Appeals from preliminary hearings are allowed for specific jurisdictional issues dealing with whether claimant suffered accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice or claim was given in a timely manner, and whether certain defenses apply. K.S.A. 1998 Supp. 44-534a grants the administrative law judge the jurisdiction and authority to decide a claimant's entitlement to temporary total disability compensation. Therefore, the Administrative Law Judge did not exceed his jurisdiction in granting claimant temporary total disability benefits, and the Appeals Board will not consider that issue on appeal at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated November 10, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
 Gary R. Terrill, Overland Park, KS
 Brad E. Avery, Administrative Law Judge
 Philip S. Harness, Director